

## **NOTICE OF PROPOSED RULEMAKING**

### **DIVISION 6, PART 6, CHAPTER 1, ARTICLE 3, OF THE CALIFORNIA CODE OF REGULATIONS REGARDING FINANCIAL ASSISTANCE FOR FLOOD MANAGEMENT PROJECTS AND SMALL FLOOD MANAGEMENT PROJECTS**

#### **NATURE OF PROCEEDING**

NOTICE IS HEREBY GIVEN that the Department of Water Resources (DWR) is proposing to take the action described in the Informative Digest.

Public hearings regarding this proposal will be held on June 24 and July 29, 2008. Both hearings will be at 1:00 pm in the Auditorium of the Resources Building, 1416 Ninth Street, Sacramento, California 94236-0001. Any interested person or his or her authorized representative may present statements or arguments orally or in writing relevant to the action. The Auditorium is accessible to persons with disabilities. The nearest off-street parking is on the corner of 10th and P Streets and is accessed from 10th Street.

Notice is also given that written comments relevant to the proposed regulatory action may also be hand-delivered or mail to:

Department of Water Resources  
Division of Flood Management  
3310 El Camino Avenue  
Sacramento, CA 95821  
Attention: Michele Ng

Comments may also be submitted by facsimile (FAX) at (916) 574-0331 or by e-mail to [ngm@water.ca.gov](mailto:ngm@water.ca.gov). In order to be considered before the DWR adopts the proposed regulations, written comments that present statements, arguments, or contentions relative to the proposed action must be received by 5 p.m. on July 28, 2008.

Following the July 29, 2008 hearing, DWR may adopt the proposed regulations if they remain substantially the same as described in the informative digest. DWR may make changes in the proposed regulations before adopting them. The text of any modified regulations will be made available to the public with the changes clearly marked at least fifteen (15) days before the DWR adopts the regulations. A request for the modified text, if there is one, should be addressed to the agency official designated in this notice. DWR will accept comments on the modified regulations for 15 days after the date on which the revised text is made available.

## **AUTHORITY AND REFERENCE**

DWR is proposing to adopt regulations pursuant to the authority given under Water Code Section 12601. The Board is implementing, interpreting, and making specific Water Code Sections 12582.7, 12585.7 and 12585.9. The proposed regulations would establish criteria and a process for determining the percentage of State financial assistance in flood management projects. These new regulations would add Sections 570 through 577, inclusive, to Title 23 of the California Code of Regulations.

## **INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW**

In 2000, the Legislature passed and the Governor signed AB 1147, a bill that requires the DWR to adopt regulations for determining the level of State financial assistance in flood management projects. The regulations establish criteria and a process to determine a project's level of contribution and the recommended State share of costs for flood management projects. These regulations would implement and make specific Water Code Section 12585.7, which states five possible objectives for flood management projects to consider in their design. Projects resulting in a significant contribution to any of the stated objectives may receive an increase in State share of costs.

Part 6 of the Water Code gives DWR general authority to provide financial assistance to flood control projects. Water Code Section 12582.7 makes federal participation a prerequisite to State financial assistance, and Water Code Section 12585.7, for projects authorized after 1/1/2002, establishes State financial assistance at 50 to 70 percent of nonfederal capital costs related to flood control and other purposes, nonfederal capital costs of fish, wildlife, and recreation mitigation, and nonfederal planning, engineering, and design costs. The United States government requires nonfederal (State or local) payment of these costs. The federal requirements are further described in Sections 2213, 2215(b), and 2215(c) of the United States Code.

The percentage of State financial assistance in nonfederal costs (State share) is a minimum of 50 percent. It may increase up to 70 percent if the project makes significant contribution to one or more of the five objectives: (1) protection, creation, enhancement, or opportunity for enhancement of endangered species, riparian, aquatic, terrestrial, or other important habitats; (2) protection or enhancement of open space; (3) development or enhancement of designated recreational opportunities, provided the project is sufficiently accessible to the public; (4) increased flood protection for areas with median household income below 120 percent of poverty level; or (5) increased flood protection for State transportation or water supply facilities. The proposed regulations would provide specific criteria for determining the recommendation of DWR or the Central Valley Flood Protection Board as to the State share, based on the project's contribution to any of the objectives. Water Code Section 12585.7 requires DWR to develop these criteria by adopting regulations.

Water Code Section 12582.7 requires the submittal of a report containing specified information to the Legislature before State authorization of a project. Water Code Section 12585.7 requires the report or an addendum to it to include the State recommendation on State share based on substantial evidence in the record. The proposed regulations specify the evidence required and make it a part of the public record by including it in the report to the Legislature.

The proposed regulations include a scope section summarizing the intent of the regulations and a definitions section. There are sections describing Project eligibility, process of determining the State share, the contents of a report to be prepared by the local agency for review, the method and formulas to determine the project's contribution to the objectives, and the method to determine the recommended percentage increase and State share. It also includes a section describing the contents of the report to the Legislature and a section on adjustments to the recommended State share if the project changes substantially.

#### **OTHER MATTERS PRESCRIBED BY STATUTE SPECIFICALLY FOR THIS AGENCY: FEDERAL CONFORMITY**

The proposed regulations deal exclusively with relationships between State government and local government. There is no known existing or comparable federal regulation or statute. DWR finds that these regulations have no conflict with or duplication of federal regulations.

#### **LOCAL MANDATE**

This proposal does not impose a mandate on local agencies or school districts.

#### **FISCAL IMPACT ESTIMATES**

This proposal does not impose any costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (Commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary cost savings on local agencies. This proposal does not result in any cost or savings in federal funding to the state. The purpose of the proposed regulations is to determine the amount of State financial assistance provided to flood management projects, and therefore the regulations will have an impact on costs to participating local agencies. Local agencies that choose to participate in the program will achieve a cost savings of between 50 percent and 70 percent of the nonfederal costs, depending on the project's contribution to the objectives. The proposed regulations will not result in either a savings or a cost to local agencies that choose not to participate in the program.

#### **COSTS OR SAVINGS TO STATE AGENCIES**

The statute provides that the State share of authorized flood management projects is 50 percent of the non-federal cost, plus up to 20 percent additional for significant contribution to any of the specified objectives. The proposed regulations make specific the criteria and process to determine a project's contribution to the objectives. The purpose of these regulations is to determine the amount of State financial assistance to

be provided by DWR or the Central Valley Flood Protection Board for a project, and therefore the regulations will have an impact on State costs. The statute that the regulations implement supersedes a previous statutory provision for a fixed state share of 70 percent State share of the nonfederal costs for flood management projects. The proposed regulations will result either in the same cost to the State as the previous statute or in a savings of up to 20 percent depending on the project's contribution to the objectives.

### **BUSINESS IMPACT/SMALL BUSINESS**

No adverse economic effect would result from the proposed regulations. In making this determination, DWR relies solely on the purpose of the proposal and the referenced statutes, which do not change the total cost of any project, but only affect the allocation of the costs between local and State government. The level of potential private business participation, [including small business](#), in any flood protection project is unaffected, and there is no imposition of direct costs or benefits to small businesses as defined by section 11342.610. [The Department makes an initial determination that this action will not have a significant, statewide, adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.](#)

### **ASSESSMENT REGARDING THE EFFECT ON JOBS/BUSINESSES**

The DWR has determined that this regulatory proposal will not: (1) create or eliminate jobs within California; (2) create new business or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

### **COST IMPACT ON REPRESENTATIVE PERSON OR BUSINESS**

DWR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **EFFECT ON HOUSING COSTS**

None

### **ALTERNATIVES**

[DWR must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.](#) DWR invites interested persons to present statements or arguments with respect to alternatives to the proposed action at the above-mentioned hearing or during the written comment period.

### **STATEMENT OF REASONS AND INFORMATION**

The DWR has prepared an initial statement of reasons for the proposed regulations and has available all the information upon which the proposal is based.

**TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulations and the statement of reasons and all of the information upon which the proposal is based, may be obtained from the Agency Representative:

Michele Ng, P.E.  
Department of Water Resources  
Division of Flood Management, Subventions  
Telephone No: (916) 574-2745  
Fax No: (916) 574-0331  
Email Address: [ngm@water.ca.gov](mailto:ngm@water.ca.gov)

Or

Jeff Parsons, P.E.  
Department of Water Resources  
Division of Flood Management, Subventions  
Telephone No: (916) 574-2003  
Fax No: (916) 574-0331  
Email Address: [jparsons@water.ca.gov](mailto:jparsons@water.ca.gov)

If the text of the proposed regulations is substantially changed following the public hearing or the written comment period, the full text of the resulting regulations will be available to the public for additional comment for at least 15 days before the regulations are adopted. A final statement of reasons will be prepared when all comments have been received and considered, prior to closing the rulemaking record.

These documents may also be viewed and downloaded from the DWR website at [www.fcpsubventions.water.ca.gov](http://www.fcpsubventions.water.ca.gov).

**AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE**

All of the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person above

**WEBSITE ACCESS**

Materials regarding this proposal can be found at [www.fcpsubventions.water.ca.gov](http://www.fcpsubventions.water.ca.gov).